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ORIGINAL

March 8, 1999

EX PARTE

BY MESSENGER

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Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: GTE-Bell Atlantic Merger
CC Docket No. 98-184

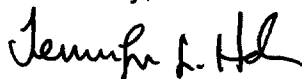
Dear Ms. Salas:

Attached is a letter to Mr. Thomas Krattenmaker from Steven G. Bradbury (GTE) and Michael E. Glover (Bell Atlantic) clarifying two points relating to our joint request for limited, interim long distance relief dated February 24, 1999. Please place the attached letter in the public record for the above-referenced proceeding.

For your convenience, an original and twelve copies of this filing are enclosed.

Thank you for your attention to this matter. If you should have any questions please do not hesitate to call me at (703) 974-7699.

Sincerely,


Jennifer L. Hoh

Enclosure

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March 8, 1999

By Hand

Mr. Thomas Krattenmaker
Federal Communications Commission
1919 M Street
8th Floor
Washington, D.C. 20554

Re: GTE-Bell Atlantic Merger, CC Docket No. 98-184

Dear Mr. Krattenmaker:

This briefly follows up on two points relating to our February 24 request for limited, interim long distance relief for the existing businesses of GTE Internetworking (formerly BBN).

1. The limited, interim relief requested here is consistent with the Commission's Advanced Services Order.

As explained in our February 24 filing, the limited, interim relief requested here for GTE's existing Internet business will help to preserve the competitiveness of the Internet. As the FCC and Department of Justice recognized in their review of the MCI/WorldCom merger, the vital competitive balance in the Internet backbone market is threatened by rapid concentration. The major long distance carriers have quietly consolidated their positions in the Internet by gobbling up smaller backbones. For example, MCI WorldCom has acquired the backbone networks of AOL, CompuServe and UUNet, while AT&T has acquired CERFNet and IBM's Global Network. GTE's Internet business, with a small 6 percent share of the backbone business, is the only top tier backbone provider that is not one of the big long distance carriers. Its continued viability is key to preserving the competitiveness of the Internet during this critical period of explosive growth. With traffic volumes doubling every 6 to 8 months, the future competitiveness of the Internet likely will be determined over the next two to three years, as the long distance carriers rapidly solidify their positions.

This limited, interim relief falls squarely within the Commission's express authority under section 3(25)(B) to "approve[]" LATAs "established or modified by a Bell operating company" after the passage of the 1996 Act, 47 U.S.C. § 153(25)(B). Indeed, in the rulemaking proposal accompanying the *Advanced Services Order*, the Commission itself recognized that this section of the Act does, in fact, provide it with independent authority to grant targeted relief for Internet-related services. *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 Comm. Reg. (P&F) 1 at ¶¶ 190-196 (1998) ("Advanced Services Order").

In addition, the limited, interim relief requested here differs significantly from the specific petitions that were denied the *Advanced Services Order*. The petitions at issue there, whether styled as requests for forbearance or for LATA modifications, were for unlimited and unconditional data relief – relief that would apply to all data services, for all carriers, for all geographic areas, and for all time. They were not conditioned on any demonstration of progress toward full long distance relief, and did nothing to create incentives to obtain such relief in the future.

Under those circumstances, the Commission concluded that granting the unconditional and unlimited relief requested there would “circumvent the procompetitive incentives for opening the local market to competition that Congress sought to achieve in enacting section 271 of the Act.” *Advanced Services Order* at ¶ 81-82. Consequently, it denied the petitions.

The limited, interim relief requested here contrasts sharply with the petitions that were denied in the *Advanced Services Order*, and differs from those petitions in several important respects:

First, unlike the categorical requests covering all data services and all providers in *Advanced Services*, the relief requested here is case-specific and limited to GTE Internetworking’s existing Internet backbone and other Internet-related businesses. The case-specific relief is justified, moreover, by the unique role that Internetworking already plays in maintaining a competitive balance in the Internet backbone and related businesses.

Second, unlike the requests for de novo entry at issue in *Advanced Services*, the relief requested here is needed to avoid disruption to the existing businesses and customers of GTE Internetworking. Those businesses are not subject to LATA restrictions today, and the relief merely would establish a single LATA to allow Internetworking to continue to operate for a short transitional period following the closing. Accordingly, this relief is simply a transitional “grandfathering” protection for Internetworking.

Third, unlike the relief requested in *Advanced Services*, the relief requested here would take effect only once Bell Atlantic has obtained long distance relief covering fully 25 percent of its in-region lines, demonstrating not only that Bell Atlantic is seriously committed to satisfying section 271, but also that it is well along the path to obtaining full long distance relief regionwide.

Fourth, unlike the permanent relief requested in *Advanced Services*, the relief requested here would lapse after a two year period, ensuring that Bell Atlantic’s incentives to quickly obtain full long distance relief under section 271 not only are preserved, but actually are increased.

Fifth, unlike the unconditional relief requested in *Advanced Services*, the interim relief requested here would be conditioned on operating GTE Internetworking as a separate affiliate that complies with the requirements of section 272.

Moreover, as pointed out in our February 24 submission, granting the relief requested here will not necessarily open the door to relief in other circumstances. Because relief here is justified by the unique role played by GTE Internetworking's existing businesses in preserving the competitive balance on the Internet, and is supported by the case specific record before the Commission, granting this relief does not mean that similar relief must be granted in different circumstances in the future.

2. The Commission should grant the interim relief in its order approving the merger.

As a procedural matter, the Commission unquestionably can grant the interim relief requested by Bell Atlantic and GTE in its order approving the license transfers for the merger. Doing so is consistent with all relevant legal requirements for granting such relief, and is consistent with the Commission's own previous practice.

It is black-letter law, of course, that an agency is free to interpret its governing statute case-by-case through adjudication rather than through rulemaking. *Stoller v. Commodity Futures Trading Commission*, 834 F.2d 262 (2nd Cir. 1987). As a result, there is no question that the FCC can interpret and apply its authority under section 3(25)(B) of the Act in the context of the pending merger application.

Nor is there any question that the applicable notice requirements are satisfied here. Indeed, in an adjudication such as this, the notice requirements are satisfied so long as the agency employs a procedure reasonably calculated to achieve notice, even if all the parties do not actually receive notice. *Katzson Bros., Inc. v. U.S. E.P.A.*, 839 F. 2d 1396 (10th Cir. 1988).

Here, however, the parties all have received notice. In fact, the applicants first noted in their application itself that some limited relief ultimately may be needed, and numerous parties addressed the 271 issue in their comments on the application. The applicants responded to those comments in their December 23 reply brief, and, in particular, pointed out that granting interim relief for GTE Internetworking's existing businesses would be especially appropriate. In addition, the applicants served all 43 parties to this proceeding with the February 24 request for relief. As a result, the parties already have received notice of the request for relief directly. And, because the request was filed in the public record of this proceeding, it is available to any interested non-parties as well.

Moreover, addressing this merger-specific issue in the order approving the merger is consistent with the Commission's own prior practice. For example, in its order approving the AT&T/McCaw merger, the Commission granted a request to "establish

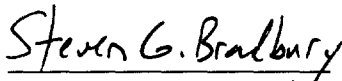
calling areas that are comparable in size to the [LATA boundaries] that the MFJ defines for the BOCs" 9 FCC Rcd 5836 at ¶ 69 (1994). This determination, of course, echoes the current statutory language authorizing the BOCs to establish new LATA boundaries subject only to approval by the Commission.

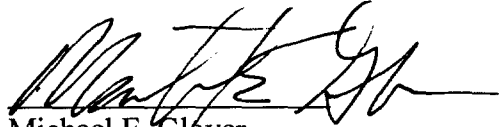
More recently, in its order approving the MCI/WorldCom merger, the Commission approved a request made late in that proceeding to transfer the MCI backbone to Cable and Wireless. There, approval for the transfer was needed to mitigate the significant *anticompetitive* effects of the MCI/WorldCom merger on the Internet backbone market. 13 FCC Rcd 18025 at ¶ 151 (1998). Here, approval for the interim relief is needed to obtain the significant *procompetitive* effects of the Bell Atlantic/GTE merger on that same market. In this sense, the relief requested here is the flip-side of the request approved in the MCI/WorldCom merger proceeding and, like there, should be addressed in the current license transfer proceeding. *See also, e.g., HLT Corporation and Hilton Hotels*, 12 FCC Rcd 18144 (1997)(granting temporary relief from cross-ownership rules in order approving license transfers); *Golden West Associates, L.P.*, 59 Rad. Reg. 2d (P&F) 125 (1985) (same).

In sum, therefore, the Commission can and should grant the request for limited, interim relief that is specific to the merger in the context of its ongoing license transfer proceedings.

Please give either of us a call with any questions relating to the above.

Sincerely,


Steven G. Bradbury (bymeq)
Counsel for GTE


Michael E. Glover
Counsel for Bell Atlantic

cc: W. Rogerson
D. Stockdale
M. Carey
M. Kende
T. Troung